

Plant Patent Application  
Serial No. 09/880,951  
Attorney Docket No.: 4194-030269

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 20 2003

Group Art Unit 1661

PETITIONS OFFICE

In re Application of

Guennadi EREMIN

Prunus Plant Named 'VSV-1'

Serial No. 09/880,951

Filed January 11, 2002

Examiner – Not Yet Assigned

Pittsburgh, Pennsylvania

May 20, 2003

PETITION UNDER 37 C.F.R. § 1.182VIA FACSIMILE 703-308-6916 (12 PAGES)

Ms. Gena Jones  
Office of Petitions/Office of Patent Legal Administration  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

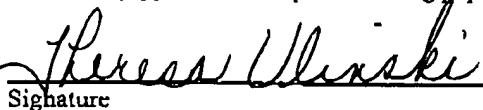
Dear Ms. Jones:

Applicant respectfully petitions for a filing date pursuant to 37 C.F.R. § 1.182 in the above-identified application. A new Declaration and Power of Attorney, the Petition Fee, and the Filing Fee are submitted herewith.

I hereby certify that this correspondence is being faxed to Gena Jones (Office of Petitions) at the United States Patent and Trademark Office at 703-308-6916 on May 20, 2003.

Theresa Ulinski

(Typed name of person faxing papers)



05/20/2003

Date

Signature

Adjustment date: 07/16/2003 AKELLEY  
02/06/2003 SDIRETAL 00000010 09880951  
01 FC:8026 -130.00 0P  
07/16/2003 AKELLEY 00000028 230650 09880951  
01 FC:2003 130.00 DA 130.00 0P

**TIMELINE**

1. The above-identified application was filed *pro se* on June 15, 2001 by a plant breeding company (Varieties International of Lafayette, Oregon) on behalf of the Applicant, a citizen of Russia. The patent application packet contained the following: Plant Patent Application Transmittal, Fee Transmittal and the fee of \$245.00, Plant Patent Application Declaration, Statement Claiming Small Entity Status, Plant Color Coding Sheet, and two (2) copies of the Specification and Claim. The packet did not contain a drawing.

2. A Notice of Incomplete Nonprovisional Application was mailed to Applicant on August 17, 2001. The Notice indicated that a filing date had not been accorded to the application because the application was deposited without drawings. The Notice requested drawings and a new Declaration and gave a two (2) month non-extendable period to reply.

3. Neither of the Applicant or Varieties International has any copies of the application or other documents relating to this application in their files and the assistant who helped file the application is no longer in the employ of Varieties International. All documents referenced herein are copies from the United States Patent and Trademark Office file. Attachment A is a copy of a letter dated January 3, 2002 from Applicant's assistant along with a photograph of the claimed plant and a description thereof – sent to the United States Patent and Trademark Office that received a date stamp at the Office of Initial Patent Examination on January 11, 2002. The January 3, 2002 letter and enclosures demonstrate that the *pro se* Applicant complied with the requests in the Notice of Incomplete Nonprovisional Application. In the letter, Applicant even provided authorization to use a credit card for any additional fees required by the Patent Office.

4. According to the Bib Datasheet in Attachment B, the application was given a filing date of January 11, 2002 and is believed to have been sent to the Plant Patent (W0059804.1)

Examining Group (Group 1600) for examination. However, Applicant believes it is at this point that Varieties International was contacted by Examiner Wendy Haas to request additional photographs of the rootstock in bloom, although the exact timing of this request is unclear and not identifiable from the file history. Applicant waited for the rootstock to bloom, took additional photos and sent them in. At this point, however, Applicant was told that these photographs were submitted too late.

5. According to a telephone conversation on or around March 6, 2003 between the undersigned and Doshie E. Day of the Office of Initial Patent Examination, Ms. Day remembers this case and the other three (3) similar cases of Applicant quite well. Ms. Day stated that the Plant Patent Examining Group sent the subject application back to her office and asked that she revoke the filing date of January 11, 2002 because the photograph was not timely submitted. This was not the case since the original photograph was timely filed.

6. Over a year later, Applicant was surprised to receive a Notice of Abandonment dated January 23, 2003 for failure to reply in a timely matter to the Notice of Incomplete Nonprovisional Application for the subject application. Applicant and Varieties International sincerely believed that they had successfully complied with all of the requirements for filing the subject application to the best of their knowledge and ability.

7. Applicant (via Varieties International) immediately contacted The Webb Law Firm to assist in this matter. In the absence of any documentation related to the application, including the application itself, another Declaration and Power of Attorney form was drafted, sent to the breeder in Russia for execution, and submitted to the United States Patent and Trademark Office.

8. After numerous telephone conversations with personnel in the Petitions Branch, Ms. Genia Jones (Office of Patent Legal Administration) requested submission of a (WO059804.1)

new Declaration executed by the Russian breeder that specifically refers to the dates on which the drawings and specification were filed. Attached herewith is the new Declaration that complies with Ms. Jones' request.

**REQUEST**

All requirements to accord a filing date were complied with on January 11, 2002. Applicant and Varieties International tried to the best of their knowledge and ability to complete the subject application in a timely fashion. Applicant respectfully petitions for a filing date of January 11, 2002 and requests that the subject application be reinstated.

Date: May 20, 2003

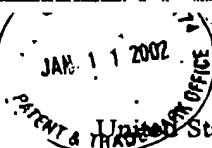
Respectfully submitted,

WEBB ZIESENHEIM LOGSDON  
ORKIN & HANSON, P.C.

By

*Patricia A. Olosky*

Patricia A. Olosky  
Registration No. 53,411  
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United States Patent & Trademark Office  
Commissioner For Patents  
Washington, D.C. 20231

COPY OF  
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January 3, 2002

Dear United States Patent & Trademark Office:

If I did not pay enough with the check I am enclosing in the amount of \$460.00 you are authorized to charge the remaining amount owed to my credit card account. My credit card account number is [REDACTED] 2001, the expiration date is 09/02. The name that appears on this credit card is Cheryol A. Erickson.

x Cheryol A. Erickson  
Signature of cardholder

Sincerely,

Todd A. Erickson

Todd A. Erickson  
Varieties International

ATTACHMENT  
A



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11/01/2002

## DESCRIPTION

This is a picture of a *Prunus* Plant VSV-1 planted in the field. The plant is one year old and ready for grafting. The photograph was taken in McMinnville, Oregon. The laser copies were made from original photographs. The colors are the best rendered colors we could achieve using photography equipment and laser printing equipment.

**ATTACHMENT  
A**

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PTO/S892 (08-00)

Approved for use through 10/31/2002, OMB 0651-0031  
U. S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

## Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents  
Washington, D.C. 20231

on 1/11/02

Date

Signature

Lindsay Erickson

Typed or printed name of person of signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Notice of  Incomplete Nonprovisional application  
 Confirmation NO. (code) (2 copies) photographs  
 Plant (2 copies) Description of plant  
 photographs (2 copies) check (1) Authorization  
 for credit card use letter (1 copy)

Burden Hour Statement: This form is estimated to take 0.03 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U. S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov



Bid Data Sheet

CONFIRMATION NO. 6006

SERIAL NUMBER 09/880,951	FILING DATE 01/11/2002 RULE	CLASS PLT	GROUP ART UNIT 1661	ATTORNEY DOCKET NO.
<b>APPLICANTS</b> Guennadi Eremin, Krymsk, RUSSIAN FEDERATION: <b>** CONTINUING DATA</b> <i>WCt 11/13/02</i> <b>** FOREIGN APPLICATIONS</b> <i>WCt 11/13/02</i>				
<b>IF REQUIRED, FOREIGN FILING LICENSE GRANTED.. SMALL ENTITY</b> <b>** 03/19/2002</b>				
Foreign Priority claimed 35 USC 119 (a-d) conditions met	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no <i>WCt</i> Examiner's Signature	STATE OR COUNTRY RUSSIAN FEDERATION	SHEETS DRAWING 2	TOTAL CLAIMS 1
Verified and Acknowledged <i>WCt</i>	Initials			INDEPENDENT CLAIMS 1
<b>ADDRESS</b> Ms. Shannon K. Reeser Varieties International P.O. Box 753 Lafayette, OR 97127				
<b>TITLE</b> Prunus plant named 'VSV-1'				
FILING FEE RECEIVED 320	<b>FEES:</b> Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:			<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other <input type="checkbox"/> Credit

ATTACHMENT  
B

## DECLARATION AND POWER OF ATTORNEY

GUENNADI EREMIN, declares:

I am a citizen of Russia, whose post-office address is 353384 Krasnodar region, Krymsk-4, Shorsa 8/A st.

I believe myself to be the original, first and sole inventor of the improvement entitled PRUNUS PLANT NAMED "VSV-1" which is described in the specification filed on June 15, 2001 and illustrated in the drawings filed on January 11, 2002.

I have asexually reproduced the new and distinct variety.

I have reviewed and understand the contents of the specification, including the claims.

I do not know and do not believe that the same was ever known or used in the United States before my invention thereof, or patented or described in any printed publication in any country before my invention or more than one year prior to this application; or in public use or on sale in the United States more than one year prior to this application.

Said invention has not been patented or been made the subject of an inventor's certificate in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months prior to this application.

I acknowledge my duty to disclose information of which I am aware which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

No application for patent or inventor's certificate thereon has been filed by me or my legal representatives or assigns in any country foreign to the United States.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

I hereby appoint Russell D. Orkin, Registration No. 25,363; William H. Logsdon, Registration No. 22,132; David C. Hanson, Registration No. 23,024; Richard L. Byrne, Registration No. 28,498; Frederick B. Ziesenhein, Registration No. 19,438; Kent E. Baldau, Registration No. 25,826; Barbara E. Johnson, Registration No. 31,198; Paul M. Retnick, Registration No. 33,059; John W. Mollvaine, Registration No. 34,219; Julie W. Meder, Registration No. 36,216; Lester N. Fortney, Registration No. 38,141; Randall A. Noczen, Registration No. 36,882; James G. Porcelli, Registration No. 33,757; Kent E. Baldau, Jr., Registration No. 36,082; Christian E. Schuster, Registration No. 43,908; Dean E. Geibel, Registration No. 42,570; Nathan J. Propelka, Registration No. 43,016; Jessica M. Schroth, Registration No. 47,102; Kirk M. Miles, Registration No. 37,891; J. Matthew Pritchard, (wo055615.1);

Registration No. 46,228; Gary F. Marz, Registration No. 45,504; Darrell E. Williams, Registration No. 45,222; Philip J. Forer, Registration No. 51,689; Alka A. Patel, Registration No. 49,092; James J. Bosco Jr., Registration No. 51,489; Alexander Detschelt, Registration No. 50,261; Patricia A. Olosky, Registration No. 53,411; and Gwendolyn R. Acker Wood, Registration No. 51,027, whose post-office address is 700 Koppers Building, 436 Seventh Avenue, Pittsburgh, Pennsylvania 15219-1818, Telephone No. 412-471-8815, my attorneys with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, to amend the specification, to appeal in case of rejection, as they may deem advisable, to receive the patent when granted and generally to do all matters and things needful in the premises, as fully and to all intents and purposes as I could do.

All correspondence and telephone calls should be addressed to  
Russell D. Orzino.

I hereby subscribe my name to the foregoing specification and claims, declaration  
and power of attorney this 2 day of May, 2003.

Inventor

Gennadi Eremeev

(100053615.1)

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**ATTACHMENT  
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